

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

Valencia Peterson and Lakesha Hooper,
individually and on behalf of themselves
and all other similarly situated, etc.,

Plaintiffs,

v.

Medtronic, Inc., Medtronic USA, Inc.,
Medtronic Logistics LLC, Medtronic
Sofamor Danek USA, Inc., and Medtronic
Sofamor Danek, Inc.,

Defendants.

Case No. 2:17-cv-2457 (JTF/dkv)

Judge John T. Fowlkes, Jr.

DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED CLASS AND COLLECTIVE ACTION COMPLAINT

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants Medtronic, Inc., Medtronic USA, Inc., Medtronic Logistics LLC, Medtronic Sofamor Danek USA, Inc., and Medtronic Sofamor Danek, Inc. (Defendants) move the Court to dismiss Plaintiffs' First Amended Class and Collective Action Complaint for failure to state a claim upon which relief can be granted.

In the wake of *Dukes v. Wal-Mart Stores, Inc.* and its progeny, Plaintiffs have not pled claims that can plausibly be brought on a class basis. Furthermore, Plaintiffs' disparate impact theory fails because Plaintiffs did not exhaust their administrative remedies under Title VII and have not pled a cognizable disparate impact claim. Finally, because Plaintiffs' claims are individual, and not collective, in nature, they should be dismissed and severed into two separate civil actions, pursuant to Federal Rule 21.

The facts and legal arguments supporting this Motion are detailed in the Memorandum in Support of Defendants' Motion to Dismiss Plaintiffs' First Amended Class and Collective Action

Complaint which was contemporaneously filed with this Motion, which is expressly incorporated herein by reference.

Dated: September 25, 2017

Respectfully submitted,

/s/ Andrew J. Voss

Paul E. Prather, Bar No. 10089

pprather@littler.com

Lisa A. Lichterman, Bar No. 014486

llichterman@littler.com

LITTLER MENDELSON, P.C.

3725 Champion Hills Drive, Suite 3000

Memphis, TN 38125

Telephone: 901.795.6695

Facsimile: 901.881.4333

Marko J. Mrkonich, MN Bar No. 0125660

mmrkonich@littler.com

Andrew J. Voss, MN Bar No. 0241556

avoss@littler.com

Claire B. Deason, MN Bar No. 0390570

cdeason@littler.com

LITTLER MENDELSON, P.C.

80 South 8th Street, Suite 1300

Minneapolis, MN 55402

Telephone: 612.630.1000

Facsimile: 612.630.9626

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2017 this document was filed electronically through the Court's ECF system, is available for viewing and downloading from the ECF system and will be sent electronically to the registered participants identified on the Notice of Electronic Filings, including Plaintiffs' counsel of record as follows:

Paige M. Lyle
paige@collinshunter.com
Anne Hunter
anne@collinshunter.com
Heather Moore Collins
heather@collinshunter.com
COLLINS & HUNTER PLLC
7000 Executive Center Drive
Building Two, Suite 320
Brentwood, TN 37027
651-724-1996

David Einer Schlesinger
schlesinger@nka.com
Michelle Leah Kornbilt
mkornblit@nka.com
Rebekah L. Bailey
bailey@nka.com
NICHOLS KASTER, PLLP
4600 IDS Center
80 S. 8th Street
Minneapolis, MN 55402
612-256-3200

ATTORNEYS FOR PLAINTIFFS

/s/ Andrew J. Voss